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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

THE SAUNDERS GROUP, an Oregon limited liability company,

Plaintiff,

v.

KRISTIN HILDEBRAND, an individual,
RYAN HILDEBRAND, an individual,
GABRIELLE HARRIS, an individual, and
HARRIS EXCAVATION, INC., an Oregon Corporation,

Defendants.

Case No.: 24CV41934

**DEFENDANTS’ REPLY IN SUPPORT
OF MOTION FOR JUDGMENT ON
THE PLEADINGS**

I. INTRODUCTION.

The Saunders Group’s opposition asks the Court to ignore what the 1984 deed plainly says and instead adopt an unreasonable, overly complicated, and self-serving interpretation. The deed from Robert Osborne to Quadco Rock & Paving, Inc. transferred all of Osborne’s interests in the disputed property without reservation. Nothing in the deed excludes the alleged Profit or reserves anything. Consequently, Mr. Osborne had nothing to transfer in 2024 when he signed the quitclaim deed. For the reasons stated here and in Defendants’ Motion, judgment on the pleadings is appropriate.

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1 **II. ARGUMENT.**

2 **A. The Deed Transferred Any Profit to Quadco.**

3 The 1984 deed transferred all of Robert Osborne’s transferable property interests,
4 including the alleged Profit, to Quadco. The deed’s granting clause expressly conveys
5 “all of that certain real property with the tenements, hereditaments, and appurtenances
6 thereunto belonging or in anywise appertaining [to the property identified as] Exhibit A.”
7 Plaintiff concedes that the profit is a hereditament. *See* Pl.’s Response at 4 (“ . . . a profit
8 is generally thought of as a hereditament.”). That concession alone is dispositive.
9 Plaintiff identifies no such reservation because there is none.

10 Plaintiff also does not dispute that the profit at issue “appertains” to the land
11 conveyed. A profit, by its very nature, is an interest attached to the land from which it is
12 taken. Having conceded both that the interest is a hereditament and that it appertains to
13 the land, Plaintiff is left to argue that the deed’s explicit conveyance of hereditaments is
14 effectively meaningless. Plf.’s Resp. at 4 (“However, the language Defendants rely on is
15 not within Exhibit A (describing what interest was actually conveyed), and is instead part
16 of the generic recitals.”). That position is incorrect. That granting clause, which Plaintiff
17 writes off without explanation, is the heart of the conveyance because it specifies what is
18 being transferred. In fact, when a granting clause conflicts with another portion of a
19 deed, the granting clause prevails. *First. Nat. Bank of Oregon v. Townsend*, 27 Or App
20 103, 107 (1976). Plaintiff’s suggestion that the granting clause can be ignored is contrary
21 to the law.

22 Plaintiff further argues that the Profit did not transfer because Exhibit A describes
23 the property as being conveyed “subject to” the 1983 contract. That argument is

1 similarly flawed. A deed transfers the grantor's entire interest unless the intent to do
2 otherwise "appears by express terms, or is necessarily implied in the terms of the grant."
3 ORS 93.120; *see also Wiser v. Elliott*, 228 Or App 489, n. 4 (2009). The 1984 deed
4 states that the transfer was "subject to" two unfulfilled land sale contracts giving the
5 Crimmins and Mickelsons certain rights in the property. Those proper disclosures are not
6 reservations.

7 On its face the 1984 deed transferred, rather than reserved, Osborne's rights under
8 both contracts. First, Mr. Osborne's ownership interests in the property only existed
9 under the unfulfilled Crimmins contract. *See* Ex. E (unfulfilled contract between
10 Crimmins and Osbornes). Naturally, Osborne disclosed in the deed that Quadco's
11 interest was "subject to" fulfilling the Crimmins' rights under the contract.¹ Second, the
12 deed also expressly transfers Mr. Osborne's rights in the 1983 contract with the
13 Mickelsons to Quadco, which is fatal to Plaintiff's argument that the "subject to"
14 language reserved those same rights. Ex. I at 3 ("By virtue of this conveyance, grantor
15 does hereby assign and transfer all of grantor's vendor's interest in the two Mickelson
16 contracts identified above."). Plaintiff's interpretation of the "subject to" clauses as
17 reservations in favor of Osborne in the context of the 1984 deed rather than an
18 identification of unfulfilled land sale contracts simply makes no sense because Osborne
19 was explicitly transferring his rights under those contracts.

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21
22 ¹ Similarly, the deed's use of "subject to" tracks the language in the 1983 land sale
23 contract between Osborne and the Mickelsons, which used the phrase "subject to" to
disclose Osborne's obligation to pay off the Crimmins under that prior land sale contract.
Ex. G at 4 (Osborne to Mickelson land sale contract).

1 In fact, under the circumstances, it makes perfect sense that Mr. Osborne would
2 transfer the Profit to his mining company. Identifying the 1983 contract does not prevent
3 the passage of the Profit to the grantee, particularly not where the deed explicitly
4 transfers hereditaments. If Osborne had intended to reserve the Profit, the deed needed to
5 say so expressly. *See* ORS 93.120. It did not. Instead, Mr. Osborne conveyed the land
6 together with all hereditaments appertaining thereto, which necessarily includes the
7 Profit.

8 **B. Mr. Osborne Transferred all of his Rights Under the 1983 Contract to**
9 **Quadco.**

10 Plaintiff also argues that the 1984 deed transferring the contract rights does not
11 include the Profit because the deed language identifies “vendor’s interests.” Plaintiff
12 misinterprets that language to mean only a very specific type of interest related to a land
13 sale contract.

14 Plaintiff’s interpretation of “vendor’s interest” is a self-serving spin. The term
15 vendor, as used in the 1984 deed and in Oregon law, refers simply to the party occupying
16 the seller’s position in a land sale contract. It is not a technical “term of art” limited to a
17 seller’s right to convey property and receive payment. Plf.’s Resp. at 5. While true that a
18 vendor’s interests commonly include the right to receive payments and the security
19 interest retained under a land sale contract, Plaintiff cites no authority for the proposition
20 that a vendor cannot have other interests. The cases cited by Plaintiff use “vendor” to
21 identify the seller in a land sale contract, not to define specific types of interests. *See*
22 *Bedortha v. Sunridge Land Co., Inc.*, 312 Or 307 (1991). In *Bedortha*, the Oregon
23 Supreme Court held that “[t]he portion of the ‘bundle of sticks’ retained by the vendor in

1 a land sale contract includes two large sticks” *Id.* at 311. Notably, the Oregon
2 Supreme Court did not say that those two sticks are the only sticks a vendor might have.

3 Here, the Profit was one of the bargained for rights Mr. Osborne, the vendor in the
4 1983 contract, negotiated for as part of the sale of his property interests. The Profit was
5 part of the purchase price. Vendor’s interests simply mean the interests of Mr. Osborne
6 as the seller in the land-sale contract. The deed itself confirms that ordinary, descriptive
7 use of the word vendor. In the very “subject to” paragraph on which Plaintiff otherwise
8 relies, the deed identifies the Mickelsons as the vendees and Osborne as the vendor. In
9 the paragraph immediately following, the deed uses the same terminology to describe the
10 parties’ respective positions under the contract to transfer the rights. When read in
11 context, the deed uses the term “vendor” simply as a label for the seller in the contract,
12 not as a limitation on the nature or scope of the interests conveyed.

13 C. **Plaintiff Fails to Address Defendants’ Argument that Any Contract**
14 **Rights were Merged by the Deed Executing the Contract.**

15 Plaintiff offers no meaningful response to Defendants’ argument that the
16 execution and delivery of the deed by the Gleaves to the Mickelsons extinguished any
17 prior Profit. That silence is telling, because there is no adequate response under Oregon
18 law.

19 Oregon has long and unequivocally held that once the deed contemplated by an
20 executory land sale contract is executed and accepted, the contract is fully performed and
21 ceases to have any independent legal effect. As the Oregon Supreme Court put it more
22 than a century ago:

23 No rule of law is better settled than that where a deed has been executed and
accepted as performance of an executory contract to convey real property, the

1 contract is *functus officio*, and the rights of the parties rest thereafter solely on the
2 deed.

3 *Winn v. Taylor*, 98 Or 556, 578 (1921) (quoting Devlin on Real Estate, 3d ed., vol. 2, §
4 850a) (internal quotations omitted).

5 That principle is straightforward and fatal to Plaintiff's theory. Once the Gleaves
6 delivered the deed to the Mickelsons, the land sale contract and all interests dependent on
7 it were merged into and extinguished by the deed unless specifically reserved. *See*
8 Compl., Ex. N. The deed that fulfilled the contract did not include or reserve the Profit.
9 Therefore, the Profit did not survive the deed.

10 This point is not discretionary or subject to interpretation. Under the merger by
11 deed doctrine, all prior contractual rights relating to the property, including any claimed
12 appurtenant or contractual Profit, merged into the deed unless expressly preserved.
13 Because the deed to the Mickelsons contains no reservation of a Profit, the deed
14 extinguished it. Plaintiff's failure to address this point is not surprising, because there is
15 no Oregon authority carving out the kind of free-floating, deed-immune Profit Plaintiff
16 imagines.

17 Nor is Plaintiff saved by conjecture about who might once have held the alleged
18 Profit. Whether it was Mr. Osborne, Quadco, Saunders, or anyone else, the identity of
19 the prior holder is irrelevant. What matters is that the Profit was not conveyed or
20 reserved in the deed that completed the contract. Under *Winn* and its progeny, that deed
21 is the final and exclusive expression of the property interests that survived the
22 transaction. Anything not included was extinguished.

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If any predecessor in interest believed that the Gleaves had some duty to preserve the Profit but failed to do so when they executed the deed, that dispute, if it ever existed, was between the Gleaves and their contracting partner. It is not a dispute that can be projected forward against the Hildebrands, who acquired the property decades later after the extinguishing deed had long settled the parties' rights. Oregon law does not permit a Plaintiff to resurrect an extinguished contractual interest and impose it on innocent successors who took title free and clear.

In sum, Plaintiff has no response to Defendants' merger argument because none exists. The deed executed in performance of the land sale contract did not include or reserve the Profit. Under Oregon law, that omission is dispositive. Whatever the alleged Profit once was and whoever had it, it did not survive the deed. It certainly cannot be enforced against the Defendants today.

III. CONCLUSION.

For the reasons stated above, Defendants are entitled to judgment on the pleadings.

DATED this 23rd day of December 2025.

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 23rd day of December 2025, I served the foregoing
3 **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** on the following:

4 Craig G. Russillo
5 Mario E. Delegato
6 Amanda Kohls
7 Schwabe, Williamson & Wyatt, P.C.
8 1211 SW 5th Ave., Suite 1900
9 Portland, OR 97204
10 Attorneys for Plaintiff

11 by the following indicated method(s):

- 12 ☒ by **mailing** a true and correct copy thereof in a sealed first-class postage prepaid
13 envelope, addressed to the foregoing attorney at the last known office address of
14 the attorney, and deposited with the United States Post Office at Portland, Oregon
15 on the date set forth above.
- 16 ☒ by **emailing** a courtesy copy to the attorney listed above at the foregoing
17 attorney's last known email addresses on the date set forth above.
- 18 ☐ by sending a full, true and correct copy thereof via **overnight mail** in a sealed,
19 prepaid envelope, addressed to the attorney as shown above on the date set forth
20 above.
- 21 ☒ by transmitting full, true and correct copies thereof to the attorneys through the
22 court's e-filing system [UTCR 21.100] on the date set forth above.

23
By: s/ Christopher Griffith
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